



Signed and Filed: April 1, 2021

A handwritten signature in black ink, appearing to read "Hannah L. Blumenstiel", is written over a horizontal line.

HANNAH L. BLUMENSTIEL
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re:)	Case No. 20-30242 HLB
)	
ANTHONY SCOTT LEVANDOWSKI,)	Chapter 11
)	
Debtor.)	
)	
ANTHONY SCOTT LEVANDOWSKI,)	
)	Adv. Proc. No. 20-3050 HLB
Plaintiff,)	
v.)	
)	
UBER TECHNOLOGIES, INC.,)	
)	
Defendant.)	

**AMENDED ORDER GRANTING IN PART AND DENYING IN PART UBER
TECHNOLOGIES, INC.'S MOTION TO FILE REDACTED/SEALED DOCUMENTS**

This case comes before the court on Defendant Uber Technologies, Inc.'s Amended Omnibus Administrative Motion to File Partially Redacted Oppositions to Plaintiff's Motions for Summary Judgment, to File Exhibits Under Seal, and to File Amended Omnibus Declaration.¹ The Motion asks the court for permission to file: (a) partially redacted oppositions² to three motions for partial summary judgment filed by Plaintiff/Debtor

¹ Dkt. 161 (the "Motion").

² Dkts. 148, 149, and 150 (the "Oppositions").

1 Anthony Levandowski³; (b) certain exhibits under seal⁴; and (c)
2 an amended omnibus declaration in support of the Oppositions.⁵
3 The court will first address Uber's Motion's request for
4 permission to file exhibits under seal, because that will inform
5 the court's ruling on the Motion's request to file redacted
6 Oppositions.

7 Uber affirmatively requests permission to file the following
8 exhibits under seal: U-1, U-6, U-43, U-44, U-45, U-46, U-50, U-
9 65 (pp. 34-35 only), U-74, U-75, U-81, U-86, U-87, and U-88.

10 Most of these exhibits, specifically U-1, U-6, U-33, U-43, U-44,
11 U-45, U-46, U-50, U-65 (pp. 34-35 only), U-74, U-75, U-81, U-86,
12 and U-87 should be sealed pursuant to prior court orders.⁶
13 Exhibit U-88 should be sealed for the reasons expressed in the
14 Motion.⁷

15 Uber's Oppositions introduce many, many other exhibits, as
16 to which Uber takes no position concerning their filing under
17 seal or in redacted form. These include exhibits U-7, U-8, U-9,
18 U-10, U-11, U-12, U-13, U-14, U-15, U-16, U-17, U-19, U-20, U-21,
19 U-22, U-26, U-27, U-29, U-30, U-31, U-34, U-35, U-36, U-37, U-38,
20 U-39, U-40, U-42, U-47, U-48, U-52, U-53, U-54, U-55, U-56, U-57,
21 U-58, U-59, U-60, U-61, U-62, U-63, U-64, U-65, U-66, U-67, U-68,
22 U-69, U-70, U-71, U-72, U-73, U-83, U-84, and U-85. Uber's

23
24 ³ Dkts. 118, 120, and 122.

25 ⁴ Dkts. 181 and 182.

26 ⁵ The court granted item (c) in a Docket Text Order issued March 25, 2021 and
Uber filed its amended omnibus declaration on March 26, 2021 (Dkt. 181).

27 ⁶ Dkts. 28, 44, 58, 95.

28 ⁷ Motion (Dkt. 161) at 6:13, 17-25.

1 Motion mentions these exhibits because Mr. Levandowski, Google
2 LLC, or some other third party designated them or information
3 they contain as confidential under protective orders issued in
4 this proceeding or in other litigation relevant to this action.
5 The Motion suggests that those orders obligated Uber to take
6 reasonable measures to avoid public disclosure of such material.

7 As required by Civil L.R. 79-5(e), Google⁸, Waymo LLC⁹, and
8 third parties¹⁰ Tyto LiDAR LLC, Sandstone Group LLC, Mr. Ognen
9 Stojanovski, and Mr. Brent Schwarz¹¹ have filed declarations in
10 support of the filing of certain of Uber's exhibits under seal or
11 in redacted form. Google and Waymo ask that the court permit
12 Uber to file the following exhibits under seal: U-1, U-6, U-7,
13 U-8, U-9, U-43, U-44, U-45, U-46, U-50, U-65 (pp. 34-35 only), U-
14 73, U-74, U-75, U-86, and U-87. Google also asks that the court
15 permit the filing of Uber's exhibit U-72 in redacted form, and
16 Google has submitted a copy of exhibit U-72 that includes its
17 proposed redactions for the court's in camera review.¹² The
18 Third Parties ask the court to authorize Uber to file the
19 following exhibits under seal, or at least in redacted form: U-
20 10, U-12, U-13, U-14, U-16, U-17, U-19, and U-20.

23 ⁸ Dkt. 213.

24 ⁹ Dkt. 211.

25 ¹⁰ Dkt. 235.

26 ¹¹ The court will refer to Mr. Stojanovski, Mr. Schwarz, Tyto LiDAR LLC, and
27 Sandstone Group LLC as the "Third Parties".

28 ¹² Dkt. 222.

1 On March 30, 2021, Mr. Lior Ron, a party to litigation in
2 which some of the documents referenced in the Motion were
3 produced, also apparently filed a Civil L.R. 79-5(e) declaration
4 to weigh in on Uber's filing of certain exhibits under seal or in
5 redacted form,¹³ but for some reason unknown to the court, that
6 declaration was not properly docketed until after the entry of
7 the court's original order on the Motion on April 1, 2021.¹⁴ In
8 his declaration, Mr. Ron asks the court to seal Exhibit U-1.
9 Even though the court was not aware of it until after the
10 original order was issued, the original order nonetheless appears
11 to have addressed Mr. Ron's concerns. This amended order,
12 therefore, reflects the correction on the docket to properly
13 acknowledge Mr. Ron's declaration, but is otherwise substantively
14 the same.

15 Federal common law provides a right of public access to
16 judicial records.¹⁵ This right assumes special importance in
17 bankruptcy because "unrestricted access to judicial records
18 fosters confidence among creditors regarding the fairness of the
19 bankruptcy system."¹⁶

20 Consistent with this principle, section 107¹⁷ provides that
21 all papers filed in a bankruptcy case or related proceeding are
22

23 ¹³ Dkt. 244.

24 ¹⁴ Dkt. 242.

25 ¹⁵ In re Crawford, 194 F.3d 954, 960 (9th Cir. 1999) (citing Nixon v. Warner
26 Comm., Inc., 435 U.S. 589, 597-98 (1978)).

27 ¹⁶ Id.

28 ¹⁷ Unless otherwise indicated, all statutory citations shall refer to Title 11
of the United States Code, aka the "Bankruptcy Code", and all citations to a

1 public records except where redaction is necessary for the
2 following purposes: to "(1) protect an entity with respect to a
3 trade secret or confidential research, development, or commercial
4 information," or to "(2) protect a person with respect to
5 scandalous or defamatory matter."¹⁸ Redaction to prevent "undue
6 risk of identity theft or other unlawful injury" is also
7 appropriate.¹⁹

8 In the Ninth Circuit, this statutory framework supplants the
9 common law principles applicable outside the bankruptcy courts
10 and must be narrowly construed.²⁰ Even if section 107(b) or (c)
11 apply, redactions must be tailored to the statutory
12 justification; sealing documents in their entirety is
13 disfavored.²¹

14 The party seeking permission to file documents under seal or
15 in redacted form bears the burden of providing the court with
16 "specific factual and legal authority demonstrating that a
17 particular document as issue is properly classified" as

18
19
20 "Bankruptcy Rule" shall refer to one of the Federal Rules of Bankruptcy
Procedure.

21 ¹⁸ Section 107(a) and (b).

22 ¹⁹ Section 107(c).

23 ²⁰ In re Roman Cath. Archbishop of Portland in Oregon, 661 F.3d 417, 431 (9th
24 Cir. 2011) (holding that common law principles are preempted by section 107);
In re Khan, 2013 WL 6645436, *3 (B.A.P. 9th Cir. Dec. 17, 2013) (citing
25 Crawford, 194 F.3d at 960 n. 8).

26 ²¹ In re Motors Liquidation Co., 561 B.R. 36, 42 (Bankr. S.D.N.Y. 2016); In re
Rivera, 524 B.R. 438, 445 (Bankr. D.P.R. 2015) (quoting In re Borders Group,
27 Inc., 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011)) ("[t]he policy favoring access
28 supports making public as much information as possible while still preserving
confidentiality of protectable information").

1 protectable under section 107.²² "[I]t is firmly established
2 that '[e]vidence - not just argument - is required to support the
3 extraordinary remedy of sealing.'" ²³

4 As previously indicated, Uber's Motion correctly states that
5 the court has previously entered orders approving the filing of
6 certain of its exhibits under seal. The court will adhere to its
7 prior orders and will grant the Motion to the extent it requests
8 permission to file the following exhibits under seal: U-1, U-6,
9 U-33, U-43, U-44, U-45, U-46, U-50, U-65 (pp. 34-35 only), U-74,
10 U-75, U-81, U-86, and U-87. Also as previously stated, the court
11 agrees that Uber's exhibit U-88 should be filed under seal.

12 Google and Waymo join the Motion as to most of the foregoing
13 exhibits. The only exhibits they add to the mix are U-7, U-8, U-
14 9, and U-73, which Google asks the court to seal, and U-72, as to
15 which Google asks the court to permit its filing in redacted
16 form.

17 The court agrees that exhibits U-7, U-8, and U-9 should be
18 sealed, as these documents contain commercial information that
19 section 107 was designed to protect. The court also agrees that
20 exhibit U-72 should be file with the minimal, well-reasoned
21 redactions that Google proposes.

22 Google's request that the court approve exhibit U-73 for
23 filing under seal in its entirety is far more problematic.
24 Exhibit U-73 consists of the Declaration of Ms. Mary Fulginiti
25 Genow and its 11 accompanying exhibits (a total of 202 pages),

26
27 ²² In re Anthracite Cap., Inc., 492 B.R. 162, 171 (Bankr. S.D.N.Y. 2013).

28 ²³ In re Gibbs, 2017 WL 6506324, *2 (Bankr. D. Haw. Dec. 19, 2017) (quoting
Motors Liquidation, 561 B.R. at 43).

1 one or more of which duplicate other exhibits referenced in the
2 Motion.

3 Google argues that the Genow Declaration and its exhibits
4 "contain a significant amount of Google confidential and personal
5 information about Google's current and former employees," as well
6 as "confidential business information about Project Chauffeur."

7 Google also notes that the court has already approved the filing
8 under seal of information "related to" the subject matter of some
9 information in exhibit U-73, but does not say whether any of the
10 specific documents or information included in exhibit U-73 have
11 already been filed under seal, pursuant to prior court order.²⁴

12 Google also neglects to explain why Uber's proposed redactions of
13 the Genow Declaration are insufficient to satisfy its concerns.

14 Having carefully reviewed the Genow Declaration and its
15 attached exhibits A - K (Uber exhibit U-73), the court
16 respectfully declines to permit the filing of exhibit U-73 under
17 seal in its entirety. Uber's proposed redactions to the Genow
18 Declaration are sufficient to address Google's concerns. As to
19 the specific exhibits attached to the Genow Declaration, the
20 court concludes as follows:

21 Exhibit A (also exhibit U-29): This document is a contract
22 to which Google is not a party, and it does not contain sensitive
23 commercial information. The court declines to seal this
24 document.

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26
27 ²⁴ Given that Google bears the burden of establishing grounds for filing the
28 documents to which it refers under seal or in redacted form, Google should
have directed the court to the specific orders that justify the relief it
requests.

1 Exhibit B: The court agrees that this document contains a
2 substantial amount of sensitive commercial information and should
3 be filed under seal.

4 Exhibit C: The court agrees that this document should be
5 filed under seal, as it contains much of the raw data on which
6 Exhibit B appears to have been based.

7 Exhibit D: The court does not believe that this document
8 needs to be filed under seal, as it does not contain information
9 of the type section 107 is intended to protect.

10 Exhibit E: The court agrees that this document should be
11 sealed, as it contains much of the raw data upon which Exhibit B
12 appears to have been based.

13 Exhibit F: The court agrees that this document should be
14 sealed, as it contains much of the raw data upon which Exhibit B
15 appears to have been based.

16 Exhibit G: The court agrees that this document should be
17 sealed, as it contains an outline of information incorporated
18 into what appears to have become Exhibit B.

19 Exhibit H: The court agrees that this document should be
20 sealed, as it consists of what amounts to a rough draft of what
21 appears to have become Exhibit B.

22 Exhibit I: The court agrees that this document should be
23 sealed, as it sets forth notes and other information incorporated
24 into Exhibit B.

25 Exhibit J: The court does not believe this document should
26 be sealed, as it does not contain sensitive commercial
27 information.
28

1 Exhibit K: The court does not believe this document should
2 be sealed, as it does not contain sensitive commercial
3 information.

4 The court will now address the Third Parties' declaration
5 and its request that certain of Uber's exhibits be filed under
6 seal or in redacted form.

7 Exhibit U-10: This document does not contain information of
8 the type section 107 is intended to protect. The court declines
9 to approve the filing of this document under seal.

10 Exhibit U-12: This document does not contain information of
11 the type section 107 is intended to protect. The court
12 respectfully declines to approve the filing of this document
13 under seal.

14 Exhibit U-13: This document does not contain information of
15 the type section 107 is intended to protect. The court
16 respectfully declines to approve the filing of this document
17 under seal.

18 Exhibit U-14: This document does not contain information of
19 the type section 107 is intended to protect. The court
20 respectfully declines to approve the filing of this document
21 under seal.

22 Exhibit U-16: This document does not contain information of
23 the type section 107 is intended to protect. The court
24 respectfully declines to approve the filing of this document
25 under seal.

26 Exhibit U-17: This document does not contain information of
27 the type section 107 is intended to protect. The court
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1 respectfully declines to approve the filing of this document
2 under seal.

3 Exhibit U-19: As redacted, this document already protects
4 whatever sensitive information it might set forth in unredacted
5 form. The court respectfully declines to seal this document, but
6 will permit its filing as redacted.

7 Exhibit U-20: As redacted, this document already protects
8 whatever sensitive information it might set forth in unredacted
9 form. The court respectfully declines to seal this document, but
10 will permit its filing as redacted.

11 Having ruled on the Motion as to specific Uber exhibits, the
12 court will turn its attention to the Motion's request for
13 permission to file redacted Oppositions.

14 Opposition (Dkt. 148) to Statute of Limitations Summary
15 Judgment Motion (Dkt. 122). The court declines to permit the
16 redactions taken at 2:19, 12:3, 13:9-13, 13:16-17, 14:17-23, or
17 15:1-2 of this Opposition, as Uber offers no argument or evidence
18 in support thereof. The court also declines to permit the
19 redaction of paragraphs 5-10 of the DeStefano Declaration, as
20 Uber offers no argument or evidence in support thereof. The
21 court will permit the redactions taken at 12:14-15 and 12:17-18
22 of this Opposition; and paragraphs 4-8 of the Yoshida
23 Declaration, as these appear to be consistent with one or more of
24 the court's prior orders or with this order.

25 Opposition (Dkt. 149) to Fraud-Based Counterclaims Summary
26 Judgment Motion (Dkt. 118). The court will permit the redactions
27 taken in this Opposition at 1:21, 2:1-3, 2:6-10, and 2:13,
28 consistent with one or more of the court's prior orders or with

1 this order. The court declines to permit the redactions taken in
2 this Opposition at 2:19-25 or 3:1-9, as Uber offers no argument
3 or evidence in support thereof. The court will permit the
4 redactions in this Opposition taken at 3:11-28, 4:1-12, 4:14-16,
5 4:19-23, 4:24-25, 4:28, 5:1-5, 5:16-18, and 5:23-24, consistent
6 with one or more of the court's prior orders or with this order.
7 The court declines to permit the redactions taken at 6:2 or 6:6-
8 12, as Uber offers no argument or evidence in support thereof.
9 The court declines to permit the redactions taken at 7:8, 7:11-
10 16, 7:19-20, 7:23-27, as Uber offers no argument or evidence in
11 support thereof. The court will permit the redaction taken in
12 this Opposition at 8:9-12 as consistent with one or more of the
13 court's prior orders or with this order. The court declines to
14 permit the redactions taken in this Opposition at 8:19-20, 8:22-
15 23, 8:25-28, 9:2-3, 9:12-16, as Uber offers no argument or
16 evidence in support thereof. The court will permit the
17 redactions taken at 9:18-25 and 10:1-3, consistent with one or
18 more of the court's prior orders or with this order. The court
19 declines to permit the redactions taken in this Opposition at
20 10:23-24 or 11:1-2, as Uber offers no argument or evidence in
21 support thereof. The court will permit the redaction taken in
22 fn. 7, consistent with one or more of the court's prior orders or
23 with this order. The court will permit the redaction taken in
24 this Opposition at 14:21-24 and 14:26-27, consistent with one or
25 more of the court's prior orders or with this order. The court
26 declines to permit the redactions taken in this Opposition at
27 15:3-10 as Uber offers no argument or evidence in support
28 thereof. The court will permit the redactions taken in this

1 Opposition at 16:13, 17:20-21, 19:27, 22:1-2, 23:16-18,
2 consistent with one or more of the court's prior orders or with
3 this order. The court declines to permit the redactions taken in
4 this Opposition at 22:27-28 or 23:1-2, as Uber offers no argument
5 or evidence in support thereof. The court has already addressed
6 the Genow Declaration and its accompanying exhibits.

7 Opposition (Dkt. 150) to Waymo Settlement Summary Judgment
8 Motion (Dkt. 120). The court will permit all redactions taken in
9 this Opposition, consistent with one or more of the court's prior
10 orders or with this order.

11 Accordingly, the Motion is hereby **GRANTED IN PART AND DENIED**
12 **IN PART**, as follows:

13 1. The Motion is **GRANTED** as to the following exhibits,
14 which may be filed under seal: U-1, U-6, U-7, U-8, U-9, U-43, U-
15 44, U-45, U-46, U-50, U-65 (pp. 34-35 only), U-74, U-75, U-81, U-
16 86, U-87, and U-88.

17 2. The Motion is **GRANTED** as to the following exhibits,
18 which may be filed in redacted form in accordance with this
19 order: U-72 and U-73.

20 3. The Motion is **GRANTED IN PART AND DENIED IN PART** as to
21 its request for permission to file redacted Oppositions. Uber
22 may file redacted Oppositions only as consistent with this order.

23 4. The Motion is **DENIED** as to the following exhibits: U-
24 10, U-11, U-12, U-13, U-14, U-15, U-16, U-17, U-19, U-20, U-21,
25 U-22, U-26, U-27, U-29, U-30, U-31, U-34, U-35, U-36, U-37, U-38,
26 U-39, U-40, U-42, U-47, U-48, U-52, U-53, U-54, U-55, U-56, U-57,
27 U-58, U-59, U-60, U-61, U-62, U-63, U-64, U-66, U-67, U-68, U-69,
28 U-70, U-71, U-83, U-84, U-85, as neither Uber nor any other

1 interested party requested that they be filed under seal or in
2 redacted form.

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4 ****END OF ORDER****
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Court Service List

[None]